Frequently Asked Questions Regarding GMA Updates

Information regarding the GMA Update requirement for local governments is provided in three technical bulletins produced by the Office of Community Development's (OCD) Growth Management Services program. These bulletins are available by calling (360) 725-3000 or at *www.ocd.wa.gov/growth*. In addition to the information provided in the technical bulletins, the following is additional information in response to frequently asked questions regarding the GMA Update process and the requirement to update urban growth areas (UGAs).

What are the requirements for jurisdictions to update their comprehensive plans and development regulations under the Growth Management Act (GMA)?

For counties and cities not planning under RCW 36.70A.040 (i.e., planning for critical areas and natural resources only):

Action	*Deadline*
Take legislative action to review, and if needed, revise policies and development regulations regarding critical areas and natural resource lands to ensure they comply with the GMA's requirements. RCW 36.70A.130(1)(a)	At seven-year intervals according to the time schedule in RCW 36.70A.130(4). RCW 36.70A.130(1)(a)

For counties and cities planning under RCW 36.70A.040:

Action	*Deadline*
Take legislative action to review, and if needed, revise comprehensive plan and development regulations (including those addressing critical areas and natural resource lands) to ensure they comply with the GMA's requirements. RCW 36.70A.130(1)(a)	At 7-year intervals according to the time schedule in RCW 36.70A.130(4). RCW 36.70A.130(1)(a)
Review designated UGA boundaries, densities, and patterns of urban growth, and revise the boundaries and permitted densities as needed to accommodate the urban growth projected in the county for the succeeding 20 years.RCW 36.70A.130(3)	At least every 10 years. May be combined with update required under RCW 36.70A.130(1)(a). May be combined with review and evaluation required under RCW 36.70A.215. RCW 36.70A.130
Specified counties and cities must establish a review and evaluation program to determine the quantity and type of land suitable for development (i.e., buildable lands). RCW 36.70A.215(2)(a)	Data evaluation every five years, with the first evaluation not later than September 1, 2002. RCW 36.70A.215(2)(b)

May a county or city update its comprehensive plan before its plan update deadline?

Yes, a county or city may update its comprehensive plan and development regulations under RCW 36.70A.130 before the statutory deadline. RCW 36.70A.130(5)(a) (added by SSB 5841) explicitly provides for this:

> Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the time limits established in subsection (4) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

Special provision for counties and cities subject to the first statutory deadline. Those counties and cities subject to the first deadline, December 1, 2004, are covered by a special provision in RCW 36.70A.130(6) (added by SSB 5841). To qualify under this special provision, these counties or cities must satisfy two criteria:

(1) The county or city must have adopted an ordinance establishing a schedule for periodic review of its comprehensive plan and development regulations; and

(2) Pursuant to the schedule in that adopted ordinance, the county or city must have conducted a review and evaluation of its comprehensive plan and development regulations and taken legislative action in response to that review and evaluation on or after January 1, 2001.

If these criteria are met, the review and evaluation constitute the 2004 update, and no subsequent review and evaluation is necessary prior to December 1, 2004. The next review and evaluation will be due seven years later, in 2011. The affected counties are Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom and the cities within those counties.

If a county or city updates its comprehensive plan before the prescribed statutory deadline, is the new deadline calculated from the statutory deadline or from date when the first update was completed?

Even if the county or city completes its GMA update before the deadline, the subsequent seven-year deadline should be calculated using the initial statutory deadlines set out in RCW 36.70A.130(4), as follows:

Counties	*Deadlines*
Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, Whatcom	2004, 2011, 2018, 2025, etc.
Cowlitz, Island, Lewis, Mason, San Juan, Skagit, Skamania	2005, 2012, 2019, 2026, etc.
Benton, Chelan, Douglas, Grant, Kittitas, Spokane, Yakima	2006, 2013, 2020, 2027, etc.
Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman	2007, 2014, 2021, 2028, etc.

What is the effect if a jurisdiction does not meet its initial statutory deadline?

If a jurisdiction's initial review and update is not completed by the deadline specified in RCW 36.70A.130(4), it would be listed in the OCD database as not in compliance with the GMA Update requirement and would be vulnerable to a "failure to act" determination by the growth management hearings board. It would also be subject to the provisions of RCW 43.155.070(2) and not eligible to apply for funding from the Public Works Trust Fund, and subject to RCW 70.146.070(2) and not eligible to receive funding from the Centennial Clean Water Fund. Other state funding agencies also would consider its non-compliance status in making decisions on whether to provide funding to that jurisdiction.

It should be pointed out that "failure to act" appeals to the growth management hearings boards are open-ended; they may come at any time following the statutory deadline. However, if the jurisdiction's legislative body takes action prior to the deadline to review and update its plan and development regulations, that action is presumed valid and any challenge to that action must come within 60 days after the action has been taken. (RCW 36.70A.290)

Should the legislative action required in RCW 36.70A.130 be adopted by ordinance or resolution?

No particular form of legislative action is specified; however, it would be prudent for the legislative action to be taken by ordinance because of its permanent character. More information is available from the Municipal Research and Service Center (MRSC) Web site (*www.mrsc.org)*, from which the following information was taken:

> Generally, ministerial and administrative acts may be exercised by resolution. [*State ex rel. Morrison v. Seattle*, 6 Wn. App. 181, 492 P.2d 1078 (1971).] Legislative acts, however, it has been suggested, should be made by ordinance. ["Ordinances, Resolutions and Motions: When to Use Which - How to Adopt Personnel Policies," by James K. Pharris, Senior Assistant Attorney General, and Robert J. Fallis, Assistant Attorney General, State of Washington. WSAMA *Proceedings*, November 8-9, 1985, pp. 155- 168.]
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> What is a "legislative" action? The general guiding principle is that "[a]ctions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative." [*Durocher v. King County*, 80 Wn.2d 139, 153, 492 P.2d 547 (1972).]

Are new cities that have recently adopted their first comprehensive plan and development regulations required to review and update by the deadlines in RCW 36.70A.130? What about other cities or counties that only recently adopted their comprehensive plans and/or development regulations as required by the GMA?

While RCW 36.70A.130 is not clear on this question, we recommend that all jurisdictions take specific legislative action to review and, if necessary, update their plan and development regulations, regardless of how recently the original plan and development regulations were adopted. As mentioned in response to the previous question, this action would be presumed valid and must be challenged within 60 days after the action has been taken. If the city or county

does not take legislative action to complete its review and update, it could be subject to a "failure to act" appeal before the growth management hearings boards at any time after the deadline has passed.

There may be an exception to this recommendation for those counties and cities subject to the first review and update deadline, December 1, 2004. The review and update for these jurisdictions are covered by a special provision in RCW 36.70A.130(6) (this special provision is described in more detail above on page 2). If these cities or counties have adopted their first comprehensive plan and development regulations after January 1, 2001, and have met the other criteria for this provision, the adoption of the plan and development regulations may constitute the December 1, 2004 update.

May a county update its UGA before its UGA evaluation deadline?

Yes. RCW 36.70A.130(3) requires counties and cities to review densities and patterns of urban growth in UGAs and revise their comprehensive plans as needed to accommodate the urban growth projected in the county for the succeeding 20-year period. This review and revision must be undertaken "*at least* every ten years." RCW 36.70A.130(3) (Emphasis added). This requirement sets an outside time limit for the update; there is nothing in the statute that prevents a county from updating its UGA before ten years has elapsed.

May the deadlines for comprehensive plans and UGAs be combined?

Yes. RCW 36.70A.130(1)(a) explicitly allows the review and revision of comprehensive plans under RCW 36.70A.130(1) to be combined with the review and revision of UGAs under RCW 36.70A.130(3). The most direct way to combine these two update requirements is to do them at the same time.

There also are procedural and logical reasons to combine the two update requirements. For example, RCW 36.70A.130(1)(a) and (3) both require a review and update of adopted comprehensive plans, and both subsections require the review and evaluation to consider the population growth projected for the county or city.

Do the two deadlines have to be combined?

No, the language in RCW 36.70A.130(1)(a) is permissive, not mandatory.

Who has to review UGAs? Is it only counties?

Both cities and counties have review obligations under RCW 36.70A.130(3) that are to be done concurrently and cooperatively.

Counties. At least every ten years, each county planning under RCW 36.70A.040 must review each designated UGA and the densities permitted in the incorporated and unincorporated areas of each UGA. Based on that review and on the concurrent review by the cities in the county, the county must amend its comprehensive plan by revising UGA boundaries and the densities permitted in the UGAs *as needed* to accommodate the urban growth projected to occur in the county for the next 20 years. RCW 36.70A.130(3)

Cities. Technically, cities do not review UGAs, because the county designates UGA boundaries. (See RCW 36.70A.110). However, because the size of a UGA depends in part on permitted densities in both incorporated and unincorporated portions of the UGA, adjustments to permitted densities in cities must be considered in determining whether to adjust UGA boundaries. RCW 36.70A.130(3) therefore specifically requires cities to take certain actions to participate in the UGA review process.

In conjunction with the county's review, each city in a UGA must review the densities it permits and determine the extent to which urban growth in the county has located in the city and in the unincorporated UGA. Based on that review and determination and on the concurrent review by the county, each city must amend its comprehensive plan by revising the densities permitted in the city *as needed* to accommodate the urban growth projected to occur in the county for the next 20 years. RCW 36.70A.130(3)

[Note: Even though RCW 36.70A.130(3) requires only the review and updating of comprehensive plans, it is important to recall that any revision of a comprehensive plan to change permitted densities cannot be enforced until that change is implemented in development regulations. *See* *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873-74, 947 P.2d 1208 (1997).]

Is the deadline for UGA review the ten-year anniversary date of the adoption of the county's plan?

Yes, if the final UGA is not challenged in a petition for review to a growth management hearings board.

RCW 36.70A.130(3) requires the review of UGAs "at least every ten years," but it does not specify the starting date for calculating the ten-year deadline. No growth management hearings board decision has attempted to clarify the deadline. Since the provision sets a period of time, rather than a specific date, the logical interpretation is that the ten-year deadline begins to run when a final UGA is adopted as part of a comprehensive plan. If the final UGA is not challenged in a petition to a board, the date of adoption should be considered the starting date for calculating the ten-year deadline.

If, on the other hand, a final UGA is challenged in a petition to a growth management hearings board, the starting date for calculating the ten-year deadline may be reset depending on the outcome of review by the board. Where the board has invalidated a comprehensive plan provision or development regulation affecting UGAs, the starting date for calculating the ten-year deadline period should begin to run when the board files its order lifting invalidity in response to actions taken by the county.[1]

[1] The starting date for calculating the ten-year deadline should be reset to the date of the board's order lifting invalidity even where the board's determination of invalidity is appealed in court. Under the Administrative Procedure Act, the reviewing court generally may not make the ultimate determination in place of the board. RCW 34.05.574(1) Rather, the court generally is required to remand the matter to the board for further proceedings consistent with the reviewing court's order.

Are cities obligated to review their UGAs within ten years of adoption of their plan?

No, the ten-year deadline in RCW 36.70A.130(3) references counties, not cities. Counties ultimately are responsible for reviewing and updating UGAs, so RCW 36.70A.130(3) references counties when setting the ten-year deadline: "Each *county* that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas . . ." (emphasis added). However, cities are obligated to participate in the UGA review and update undertaken by counties according to the ten-year deadline imposed on counties.

Since the county is ultimately charged with reviewing and updating the UGAs, the deadline for UGA review and update should be tied to the adoption of the county's comprehensive plan.

How do county-wide planning policies affect the process for designating and reviewing UGAs?

County-wide planning policies can define the process for designating and evaluating UGAs, but they cannot change the deadline for this process, nor can they change the substantive obligations imposed on counties and cities under RCW 36.70A.110.

If county-wide planning policies do not allow counties and cities to take the actions required under RCW 36.70A.130 according to the schedules set therein, the county-wide policies must be amended accordingly. *See King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 176, 979 P.2d 374 (1999).

If a jurisdiction has not yet included the best available science in its critical areas ordinance as required by RCW 36.70A.172, must that be done before the statutory deadline for its review and update established in RCW 36.70A.130?

No. If a local government wants to comply with GMA, it should be sure its existing critical areas ordinance includes the best available science, regardless of the deadlines in RCW 36.70A.130. However, there is no action-forcing requirement that requires an update until those deadlines, therefore, if a local government wants to put off compliance as long as possible, it may wait until the applicable deadline in RCW 36.70A.130. Please note, though, that a critical areas ordinance that is badly out of date may become unenforceable. *See Honesty in Environmental Analysis and Legislation v. City of Seattle*, 96 Wn. App. 522, 533-34, 979 P.2d 864 (1999).